IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8594 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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L C GANATRA - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Petitioner(s) : 1,
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
DS AFF.NOT FILED (R) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/01/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed

for an appropriate writ, direction and/or order quashing and setting aside the order dated 16th January, 1997 passed by the respondent No.1 – State of Gujarat i.e. Secretary, Water Supply, Health & Family Welfare Department, Gandhinagar, whereby withholding one increment with future effect for two years.

2. It is the contention on behalf of the petitioner that by notification dated 10th February, 1988, the services of the petitioner was transferred to the Gujarat Water Supply & Sewerage Board and therefore, in view of Section 20 r.w. Section 29 of the Gujarat Water Supply & Sewerage Board Act; 1978, it was only the Board who has jurisdiction and/or authority to initiate the departmental inquiry against the petitioner and impose punishment. Ms. Vinita Vinayak, learned advocate appearing for the petitioner has relied upon the judgment of the learned Single Judge of this Court dated 1st July, 1996 rendered in special civil application No. 8110 of 1995 wherein, dealing with the similar controversy,

the learned Single Judge of this Court has held that once the services are transferred to the Board by virtue of Section 20(1) & (2), the State Government would not have any jurisdiction to initiate any departmental inquiry and/or take disciplinary action.

3. Shri Dipen Desai, learned AGP is not in a position to dispute that the controversy and/or dispute which has been raised in the present special civil application is not covered by the decision of this Court dated 1st July, 1996 rendered in special civil application No. 8110 of 1995.

4. It appears from the record that initially the petitioner was serving in the State Government, however, vide notification dated 10th February, 1988, the service of the petitioner was transferred to the Gujarat Water Supply & Sewerage Board w.e.f. 1st April, 1981 and the post upon which the petitioner was working was transferred to the Board and it was ordered that

the post would cease to exist under the Government. It is not in dispute that the departmental proceeding came to be initiated against the petitioner by charge-sheet which has been issued in the year 1991 for the misconducts of 1984. Thus, the controversy, which has been raised in the present special civil application is squarely covered by the decision of the learned Single Judge of this Court dated 1st July, 1996 rendered in special civil application No. 8110 of 1995. Under the circumstances, the State Government would not have any jurisdiction to initiate the departmental proceeding against the petitioner, who was employee of the Board. Under the circumstances, the impugned order dated 16th January, 1997 passed by the State Government requires to be quashed and set aside as having without jurisdiction. Accordingly, the impugned order dated 16th January, 1997 is hereby quashed and set aside with the direction that the petitioner be restored to his earlier position with all consequential benefits. However, the same will not preclude the Board

from taking any action if it is so permissible in accordance with law and on merits for the misconducts for which the proceeding was initiated by the State Government. Rule is made absolute to the aforesaid extent. However, there shall be no order as to costs.

[M.R.Shah, J.]

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